IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

A.O. No. F.A.F.O. No. 660/2001
Babloo S/o Munja Ram (Appellant)

Vs.
Shikhumar Gupta and 2 others (Respondent)

Approved for reporting.

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Not approved for reporting

Date of decision 21.8.2004

Initial of Judge

In the High Court of Uttaranchal at Nainital.

F.A.F.O. No. 660/2001
Old no. 590/1988

Babloo S/o Munja Ram
Village Behata Tehsil Kolaras
District Shivouri M.P. .....Appellant.

Vs.

Shivkumar Gupta and 2 others ....Respondents.

Dated: 21-08-2004

Hon'ble Rajesh Tandon, J.

By the present appeal, the appellant has prayed for quashing of the award dated 25-4-1988, given by the Motor Accident Claim Tribunal, Chamoli for Rs. 7,500/-.

The facts of the case briefly stated are that Kunja Ram aged about 60 years, a cultivator by profession, earning about Rs. 500/- per months was returning after Darshan of Shri Badrinath Ji in bus HRX 2791 in the morning of 31.7.1986, and the bus slipped inside the downward khud at about 12 noon near Hanuman Chatti due to the negligence of the driver and Kunja Ram along with others died at the spot. The claimant has filed a claim for a sum of Rs. 25,000/-. The tribunal has found that the accident had taken place due to the negligent driving of the driver. The income of the deceased was calculated as Rs. 500/- per month The tribunal has held that the deceased would have been giving Rs. 200/- per month from his earning to his family and as such Rs. 2400/- per annum was calculated and this annual income was multiplied by 'eight' which comes to Rs. 19,200/-. The tribunal has also held that a sum of Rs. 13,500/- has been received by the appellant as ex-gratia compensation from the State Administration and as such the amount of Rs. 13,500/- had been deducted and a sum of Rs. 5,700/- only had been awarded.

So far as the ex-gratia payment is concerned, any

amount paid to the appellant from any resource can not be deducted and the claimant is entitled to the whole of the amount of Rs. 19,200/-. It has been held by the Apex Court in United India Insurance Co. Ltd. etc v. Patricia Jean Mahajan and others ;2002 AIR SCW 2920 that any amount received from any resources can not be deducted. The observations are quoted below:

> *"We are in full agreement with the observations made in the case of Helen Rebello (supra) that principle of balancing between losses and gains, by reason of death, to arrive at amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have come correlation with the accidental death by reason of which alone the claimants have received the amounts. We don't think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accident Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear tat amount on account of social security as may have been received must have nexus or relation with the accidental injury or death, so far to be deducted from the amount of compensation. There must become correlation between the amount received and the accidental death or it may be in the same sphere, absence the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far other items in respect of which learned counsel for the insurance company has vehemently urged for example some allowance paid to*

the children, and Mrs. Patricia Mahajan under the social security system no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made one of the constituent of fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under social security system which the claimant would have also otherwise entitled to receive irrespective of accidental death of Dr. Mahajan. If the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains may be on account of savings or other investment etc. made by the deceased would not go to the benefit of wrong doer and the claimant should not be left worse of, if he had never taken an insurance policy or had not made investments for future returns."

In view of it the appeal is allowed. The claimant-appellant is entitled to get the entire amount of compensation of Rs. 19,200/-, which has been awarded by the tribunal in his favour. No order as to costs.

(Rajesh Tandon, J.)

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